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ORIGINAL

Transcript Exhibit(s)

RECEIVED

2016 APR -8 P 1:30

AZ CORP COMMISSION  
DOCKET CONTROL

Docket #(s): RR-03639A-16-0005

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Arizona Corporation Commission

DOCKETED

APR 08 2016

DOCKETED BY	<i>KE</i>
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Exhibit #: S1; M+ M4; M6

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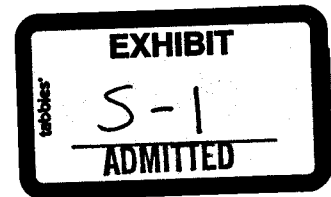
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ORIGINAL

STAFF MEMORANDUM



RECEIVED

To: THE COMMISSION

From: Robert Marvin  
Director  
Safety Division

Arizona Corporation Commission

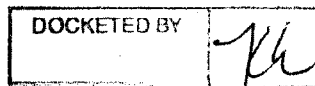
DOCKETED

MAR 03 2016

2016 MAR -3 A 10:30

AZ CORP COMMISSION  
DOCKET CONTROL

Date: March 3, 2016



RE: IN THE MATTER OF THE APPLICATION OF THE CITY OF MESA TO UPGRADE AN EXISTING CROSSING OF THE UNION PACIFIC RAILROAD BY INSTALLING A FOUR QUADRANT GATE SYSTEM AT DOBSON ROAD IN THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, USDOT NO. 741-649-G.

DOCKET NO. RR-03639A-16-0005

**Background**

On January 11, 2016, the City of Mesa ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing with the installation of a four quadrant gate system at Dobson Road in the City, Maricopa County, Arizona at USDOT No. 741-649-G.

On December 10, 2014, Staff, the Railroad, and the City participated in a diagnostic review of the proposed improvements at Dobson Road. All parties present were in agreement to the proposed improvements at the crossing. The following is a break down of the crossing in this application, including information about the crossing that was provided to Staff by the City and its consultants.

**Geographical Information**

Located in Maricopa County and just 15 miles east of Phoenix, Mesa covers 132 square miles and is the third largest city in Arizona and the 38th largest city in the nation.

With dynamic recreational, educational and business opportunities, Mesa enjoys the best in a variety of amenities including parks within easy walking distance from home, a variety of sports facilities that cater to athletes young and old, highly rated golf courses for every skill level, a diversity of special events and community festivals, and Mesa's ever-popular Chicago Cubs Spring Training baseball.

**Dobson Road**

Dobson Road is a six lane roadway consisting of three lanes northbound and three lanes southbound. The rail line in this area runs in an east to west direction. Currently at the crossing there are flashing lights, curbside automatic gates, bells, medians with automatic gates and cantilevers for the approaches in both directions. In order to automatically qualify for a Federal

Railroad Administration ("FRA") Quiet Zone at Dobson Road, the City has elected to install a four quadrant gate system. This will be accomplished by adding LED flashing lights and gates to the departure side of the crossing in each direction, to help deter vehicles from driving in the opposite direction and going around the downed gates. The estimated cost of the proposed crossing upgrade is \$551,089. The City is paying for the entire cost of the crossing improvements. The Railroad will maintain the warning devices and the crossing surface.

Average Daily Traffic ("ADT") was provided by the City and shows as of February, 2016 for Dobson Road, 15,200 vehicles per day ("vpd") northbound, and 14,500 vpd southbound. The Level of Service ("LOS") provided shows C for northbound and D for southbound.

The American Association of State Highway and Transportation Officials ("AASHTO") Geometric Design of Highways and Streets, 2004, states that the LOS characterizes the operating conditions on a facility in terms of traffic performance measures related to speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. This is a measure of roadway congestion ranging from LOS A--least congested--to LOS F--most congested. LOS is one of the most common terms used to describe how "good" or how "bad" traffic is projected to be.

The posted speed limit on Dobson Road is 45 mph. Staff records, as well as FRA accident/incident records, indicate three incidents at this crossing. The first occurred on June 4, 1995 when the driver drove around the downed gate and was struck by the train, one injury occurred. The second incident occurred on July 30, 2006 when the driver drove through the downed gate and was stuck by the train, no injuries occurred. A third incident occurred on July 4, 2008 when an auto stalled on the tracks and was struck by the train, one injury occurred.

Alternative routes from these crossings are as follows; to the west approximately 2 miles is Price Road, and to the east approximately 1 mile is Alma School Road. Both are at-grade crossings.

### **Train Data**

Data provided by the City regarding train movements through these crossings are as follows:

Train Count: 10 total average trains per day (all freight trains/no passenger trains)

Train Speed: 60 mph

Thru Freight/Switching Moves: All movements through this crossing are thru freight.

### **Schools and Bus Routes**

The City gave the following response about schools located near these crossings:

*There are no schools near this crossing. School buses do cross this crossing 99 times per day. Valley Metro Route 45 crosses 66 times a day and Route 96 crosses 88 times a day for a total of 154 times.*

### **Hospitals**

The City gave the following response about hospitals in the area;

*The nearest hospital is at Southern and Dobson (1.25 miles) away. No significant access concerns.*

### **Hazardous Materials**

The City gave the following response when asked about vehicles transporting hazardous materials through these crossings:

*No regular route is known.*

### **Zoning**

Staff requested the City provide information regarding the type of zoning in adjacent areas from this crossing. The following was the City's response:

*Zoning is Light Industrial/General Commercial. Southwest Quadrant is currently being redeveloped with Light Industrial use. The rest of the area is existing.*

### **Spur Lines**

The City gave the following answer regarding spur lines in the area that were removed by the Railroad:

*No spur removals within 10 miles of Dobson Road intersection are known.*

### **FHWA Guidelines Regarding Grade Separation**

The Federal Highway Administration ("FHWA") Railroad-Highway Grade Crossing Handbook (Revised Second Edition August 2007) provides nine criteria for determining whether highway-rail crossings should be considered for grade separation or otherwise eliminated across the railroad right of way. The Crossing Handbook indicates that grade separation or crossing elimination should be considered whenever one or more of the nine conditions are met. The nine criteria are applied to this crossing application as follows:

		<b>Dobson Road</b>	
The highway is a part of the designated Interstate Highway System	Crossing Currently meets the criteria	No	
	Crossing meets the criteria by 2030	No	
The highway is otherwise designed to have full controlled access	Crossing Currently meets the criteria	No	
	Crossing meets the criteria by 2030	No	
The posted highway speed equals or exceeds 70 mph	Crossing Currently meets the criteria	No	45 MPH
	Crossing meets the criteria by 2030	No	
AADT exceeds 100,000 in urban areas or 50,000 in rural areas	Crossing Currently meets the criteria	No	Less than 30,000
	Crossing meets the criteria by 2030	No	

Maximum authorized train speed exceeds 110 mph	Crossing Currently meets the criteria	No	Less than 60 mph
	Crossing meets the criteria by 2030	No	
An average of 150 or more trains per day or 300 million gross tons/year	Crossing Currently meets the criteria	No	10 average
	Crossing meets the criteria by 2030	No	
Crossing exposure (trains/day x AADT) exceeds 1M in urban or 250k in rural; or passenger train crossing exposure exceeds 800k in urban or 200k in rural	Crossing Currently meets the criteria	No	Less than 300,00
	Crossing meets the criteria by 2030	No	
Expected accident frequency for active devices with gates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5	Crossing Currently meets the criteria	No	
	Crossing meets the criteria by 2030	No	
Vehicle delay exceeds 40 vehicle hours per day	Crossing Currently meets the criteria	No	Currently 10 hours per day
	Crossing meets the criteria by 2030	No	Will be approx. 14 hours per day.

### **Vehicular Delays at Crossings**

Based on the current single track configuration, the City gave the following response about delay times for vehicles at the crossings in this application. The delay time is measured from the point that the warning devices are activated at the crossing until the time the train has cleared the crossing and the warning devices are reset.

*Average time is 3 minutes 34 seconds at adjacent crossings. Longest times were under 9 minutes. This is based on preemption times.*

Current delays fall well below the FHWA recommended threshold of 40 delay hours per day. Proposed future delays also do not exceed 40 hours. It is very likely that the road authority would consider some kind of roadway project to address the traffic delays before the level of delay got to this point.

Another commonly used measure outlined in the FHWA Guidelines; the so-called Crossing Exposure Index (which is simply the product of the number of trains per day multiplied by the number of vehicles crossing daily) is not currently met at this crossing. Based on future traffic projections submitted by the City, the Crossing Exposure Index will not be met in the year 2030. It should be noted that the criteria identified in the FHWA material are not mandates, but guidelines established by the FHWA, which serve to alert those having jurisdiction that potential problems may arise.

### **Grade Separation**

With regard to grade separating this crossing, the City gave the following response:

*1) The grade separation will require the relocation of the existing intersection of Dobson Rd and Broadway Rd, and the intersection of Dobson Rd and First Ave, because of the needed slope from a level grade to a level overpass would exceed the distance between the crossing and the intersection. 2) Access to business and properties for over 2000' will be closed along Dobson Rd, which in many cases is the only access to these businesses and properties; 3) To construct a grade separated crossing will require additional Right of Way to establish new intersections with intersecting roadways. This Right of Way take will have detrimental effects on adjacent properties and businesses.*

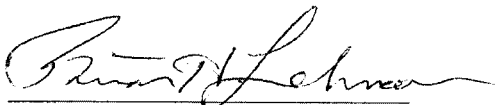
Staff has utilized the FHWA Guidelines to determine the potential need for grade separation at this crossing. Based on existing conditions, the crossing in this application meets none of the nine criteria for consideration of a grade separation. Based on future projections by the City, none of the nine criteria will be met by 2030. Therefore, Staff does not recommend grade separation at this time.

### **Crossing Closure**

The area surrounding this crossing is highly developed with both commercial businesses and residential dwellings. To close this crossing would have a negative effect on many of the local businesses and limit access to residences. Therefore, Staff would not recommend closure of this crossing.

### **Staff Conclusions**

Having reviewed all applicable data, Staff generally supports the City's application. Staff believes that the upgrades are in the public interest and are reasonable. Staff believes that the four quadrant gate system proposed by the City will provide an additional safety feature for the public's safety. Therefore, Staff recommends approval of the City's application.



Brian H. Lehman  
Railroad Safety Supervisor  
Safety Division

Originator: BHL

Original and thirteen (13) copies  
of the foregoing were filed this  
3<sup>rd</sup> day of March, 2016 with:

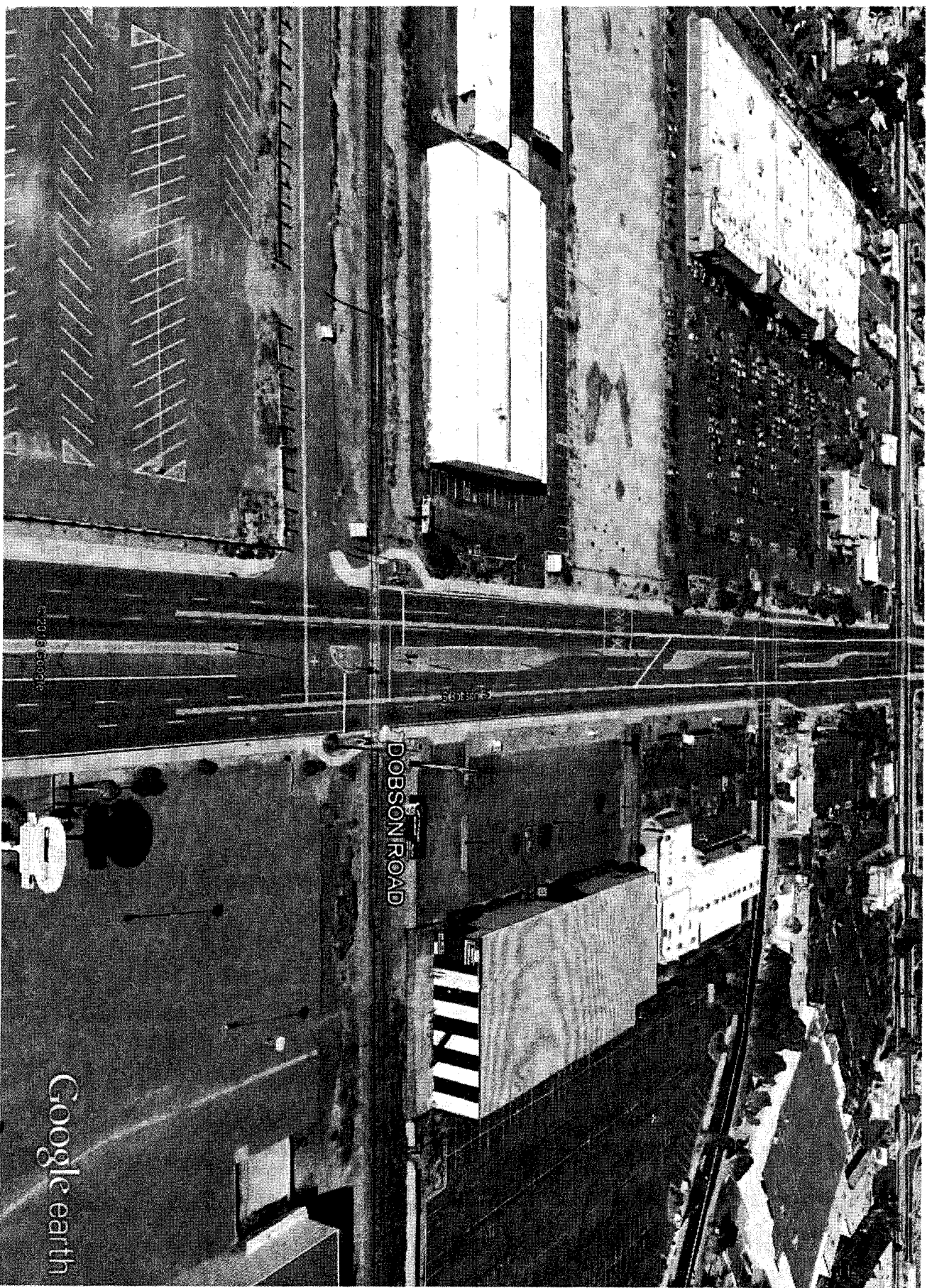
Docket No. RR-03639A-16-0005

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Alex Popovici  
Union Pacific Railroad  
631 S. 7<sup>th</sup> Street  
Phoenix, AZ 85034

W. Reed Campbell  
Beaugureau, Zukowski & Hancock, P.C.  
302 East Coronado  
Phoenix, Arizona 85004  
Attorney for Union Pacific Railroad Company

Joseph Schroeder P.E.  
Supervising Engineer  
CITY OF MESA  
20 E. Main St. Suite 500  
PO Box 1466  
Mesa, AZ 85211-1466



Google earth

feet  
meters







300 East Sixth Street  
PO Box 1466  
Mesa, Arizona 85211-1466

Transportation Department

mesaaz.gov

Ms. LeeAnn Dickson  
Grade Crossing and Trespass Manager  
USDOT/Federal Railroad Administration  
801 I Street, Suite 466  
Sacramento, CA 95814

Subject: Notice of Intent to Establish a Railroad Quiet Zone

Dear Ms. Dickson,

The City of Mesa, Arizona, intends to establish a new Quiet Zone along the Phoenix Line of the Union Pacific Railroad in the City of Mesa, between Rail Mile 0919.46 and Rail Mile 0922.98. The Quiet Zone is proposed to restrict the locomotive horn use 24 hours a day, 7 days a week.

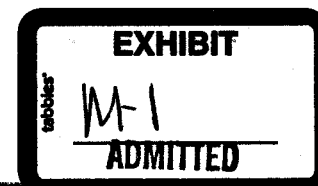
There are no established private highway-rail grade crossings in the proposed Quiet Zone. All public highway-rail and pedestrian grade crossings to be included within the proposed Quiet Zone are:

<u>US DOT NO.</u>	<u>STREET</u>	<u>LOCATION</u>
741 649 G	Dobson Rd	Rail Mile 0919.46 Phoenix Line
741 650 B	Alma School Rd	Rail Mile 0920.49 Phoenix Line
741 651 H	Extension Rd	Rail Mile 0920.97 Phoenix Line
741 653 W	Macdonald	Rail Mile 0921.84 Phoenix Line
741 657 Y	Broadway Rd	Rail Mile 0921.98 Phoenix Line
741 658 F	W 8th Ave	Rail Mile 0922.50 Phoenix Line
748 736 J	Pedestrian	Rail Mile 0922.77 Phoenix Line
741 659 M	Southern Ave	Rail Mile 0922.98 Phoenix Line

The crossing at US DOT NO. 741 652 P, Country Club Dr., Rail Mile 0921.49 is not a Public At Grade Crossing.

Each vehicular public crossing within the proposed Quiet Zone is equipped with active warning devices comprising both gates and flashing lights. The pedestrian crossing within the proposed Quiet Zone is equipped with active warning devices comprised of flashing lights and bells. Constant warning time devices are present at all crossings.

Prior to the establishment of the Quiet Zone, the City of Mesa intends to install Supplemental Safety Measures (SSM) in accordance to Appendix A to Part 222 of the FRA Rules. The City





will install 100' non-traversable medians in each direction of the grade crossing at Extension. At Broadway the medians will be 60' from the gate arm to the intersections. Additionally the City intends to install Four Quadrant Gates at the crossing on Dobson.

After the installation of the Supplementary Safety Measures at Extension, Broadway and Dobson, the City of Mesa intends to establish a new Quiet Zone pursuant to FRA Rule 222.39(a)(3), which will have a Quiet Zone Risk Index at a level below the Risk Index With Horns.

The existing Risk Index with Horns is 20610.59, and the Quiet Zone Risk Index will be 20451.99.

The City of Mesa will also install the required advance warning signs at each crossing within the Quiet Zone in accordance with Rule Section 222.35 before establishing the new Quiet Zone.

For information, questions or comments concerning this notice please contact:

Muhannad Al Zubi, PE  
City of Mesa  
PO Box 1466  
Mesa, Arizona 85211-1466  
Tel: 480-644-4912  
Fax: 480-644-3130  
E-mail: [al.zubi@measaz.gov](mailto:al.zubi@measaz.gov)

Attached Exhibit A, contains a list of all parties receiving this notification.

Please provide comments in writing and consider this notice as the beginning date of the required 60-day comment period in the Quiet Zone process. The 60-day comment period for this Quiet Zone will end on February 17, 2015, or when written comments or a "no comment" statement is received from each recipient of this notice.

Thank you for your time and attention to this matter.

Sincerely,

Alan Sanderson, P.E.  
Deputy Transportation Director  
Transportation Department  
City of Mesa



**EXHIBIT A  
PARTIES RECEIVING THE NOTICE OF INTENT**

Ms. LeeAnn Dickson

91 7108 2133 3939 4782 2501

Grade Crossing and Trespass Manager  
USDOT/Federal Railroad Administration  
801 I Street, Suite 466  
Sacramento, CA 95814

Mr. Jason Pike

91 7108 2133 3939 4782 2426

State Railroad Liaison  
Arizona Department of Transportation  
205 S 17th Ave, Room 357  
Mail Drop 618E  
Phoenix, AZ 85007  
Tel: (602) 712-7149

Mr. Brian Lehman

91 7108 2133 3939 4782 2433

Supervisor of Railroad Safety  
Arizona Corporation Commission  
2200 N. Central Ave. Ste 300  
Phoenix, AZ 85004

Mr. Alexander Popovici, PE

91 7108 2133 3939 4782 2440

Manager Public Projects  
Union Pacific Railroad  
631 S 7th Street  
Phoenix, AZ 85034  
Tel: (602) 322-2510

Mr. Patrick Halsted

91 7108 2133 3939 4782 2457

Director Industry and Public Projects  
Union Pacific Railroad  
Engineering Department  
1400 Douglas Street  
Stop 0910  
Omaha, NE 68179



February 6, 2015

Muhannad Al Zubi, PE  
City of Mesa  
PO Box 1486  
Mesa, Arizona 85211-1486

RE: Notice of Intent to Create a New Quiet Zone: City of Mesa, Arizona- postmarked December 17, 2014

Dear Mr. Zubi;

This is in response to the letter postmarked December 17, 2014 on behalf of the City of Mesa, Arizona, transmitting a Notice of Intent (NOI) to create a new 24 hour Quiet Zone on the Union Pacific Railroad's (UP) Phoenix Subdivision from Mile Post 919.45 (Dobson Road) to Mile Post 922.96 (Southern Avenue).

The NOI application provided by the City includes the following crossings:

Dobson Road	DOT# 741849G	MP 919.45
Alma School Road	DOT# 741650B	MP 920.47
Extension Road	DOT# 741651H	MP 920.95
Macdonald	DOT# 741653W	MP 921.80
Broadway Road	DOT# 741657Y	MP 921.96
West 8 <sup>th</sup> Avenue	DOT# 741658F	MP 922.48
Pedestrian Crossing	DOT# 748736J	MP 922.71
Southern Avenue	DOT# 741659M	MP 922.96

The UP has reviewed the NOI and per the requirements outlined in the FRA Train Horn Rule, 49 CFR Parts 222 and 229, UP provides the following comments:

1. Per §222.27(b) – Pedestrian crossings that are located in New Quiet Zones may be included in the quiet zone only if a diagnostic team evaluates the crossings and the crossings are equipped or treated in accordance with the recommendations of such diagnostic team. A pedestrian crossing is within the proposed limits of the quiet zone and the NOI does not indicate that a diagnostic was performed at this crossing. Please provide the documentation for the diagnostic or schedule a diagnostic evaluation of the crossing with the proper participants prior to the Notice of Establishment.
2. The City is proposing 60 foot medians at the Broadway intersection as an SSM. The intersections on both sides of the crossing appear to be significantly farther than 60 feet from the gate arm and as such, medians should be extended to the maximum distance short of the intersection.
3. The S. Center Street crossing on an industry lead track is in close proximity to this proposed quiet zone near the Broadway Road crossing and is not included in the NOI submittal. Please be advised that train horns will continue to sound at this crossing and may result in residual train horn sound once the quiet zone is implemented.
4. UP was unsuccessful in verifying the Quiet Zone Risk Index and Risk Index with Horns as shown in the City's NOI. Please be sure to verify these numbers using current traffic and train counts etc. prior to submission of the NOE. Per §222.43(e)(2)(ii)(A) of the FRA Train Horn Rule, if the

Notice contains a specific reference to Per §222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv) of this part, it shall include a copy of the FRA web page that contains the quiet zone data upon which the public authority is relying.

5. UP is concerned that the commercial driveways in close proximity to the Macdonald and Southern Avenue crossings will allow traffic to circumvent the warning devices at these locations. UP urges the City to take additional safety steps at these crossings to prevent such action by motorists.
6. Per §222.39 of the FRA Train Horn Rule, the Public Authority must implement all proposed safety improvements prior to establishing a New Quiet Zone. UP interprets this to mean that all proposed safety improvements are implemented prior to submission of Notice of Establishment (NOE).
7. Per §222.35(c) of the FRA Train Horn Rule, the Public Authority must install advanced warning signs informing motorists that routine sounding of horns has ceased at each crossing prior to establishing the New Quiet Zone. This would include the installation of advance warning signs on parallel roadway approaches in close proximity to the crossing. The advanced warning signs must be compliant with the standards in the MUTCD.
8. Per §222.43(d)(2)(v) and (vi) of the Train Horn Rule, the Public Authority will be required to provide accurate and complete Grade Crossing Inventory Forms for each grade crossing within the quiet zone as part of the Notice of Establishment.

For more information on establishing a New Quiet Zone and preparing the required documentation, please see the FRA's website at <http://www.fra.dot.gov>. If you have any questions regarding the comments please contact myself at (402) 544-5741 to discuss this matter further.

Sincerely,



Stephen Grosse-Rhode  
Sr. Manager Industry and Public Projects

CC: LeeAnn Dickson – FRA  
Jason Pike – Arizona Department of Transportation  
Brian Lehman – Arizona Corporation Commission  
Alan Sanderson – City of Mesa  
Alexander Popovici – UPRR  
Chris Keckelsen – UPRR



300 East Sixth Street  
PO Box 1466  
Mesa, Arizona 85211-1466

Transportation Department  
mesaaz.gov

Ms. LeeAnn Dickson  
Grade Crossing and Trespass Manager  
USDOT/Federal Railroad Administration  
801 I Street, Suite 466  
Sacramento, CA 95814

Subject: Addressing items raised by UPRR response to Mesa's Notice of Intent to Establish a Railroad Quiet Zone

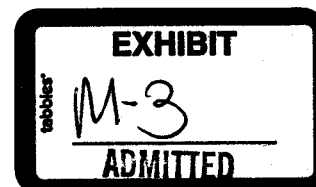
February 26, 2015

Dear Ms. Dickson,

The City of Mesa, Arizona sent out a Notice of Intent (NOI) on December 17, and received only one response, which is from Mr. Stephen Grosse-Rhode, Senior Manager Industry and Public Projects with Union Pacific Railroad.

In Mr. Grosse-Rhode's response he lists eight items that we are addressing below for your affirmation:

- 1- Mesa does not see a need to conduct another diagnostic evaluation on the pedestrian crossing that is included in the NOI. The pedestrian crossing was reviewed and evaluated by the team during the April 24, 2014 field diagnostic evaluation, and the City has not received any comments regarding this crossing. The team included representatives from the Federal Railroad Administration, Union Pacific Railroad, the Arizona Corporation Commission, and an invitation to the Arizona Department of Transportation was extended, but ADOT was not able to participate. A printout of the crossing inventory information for this crossing was not provided on the day of the diagnostic review because the crossing at least at that time, in the FRA database was listed as a private crossing with a number that does not match the field number. This was noted during the diagnostic evaluation, and the City corresponded with FRA pointing out the discrepancy of the crossing number between the field and the FRA database. An inventory update process will be followed to change the information in the database. As shown in the attached map (Exhibit A) used for the diagnostic evaluation on the 24<sup>th</sup> listing all crossings evaluated by the team, the pedestrian crossing was included in the diagnostic evaluation. Since that time, UPRR updated the crossing inventory information sheet (Exhibit B) for the pedestrian crossing in relation to this effort.
- 2- The City will extend the west median on Broadway to the extent possible so not to block the driveway. The east median will be extended to a minimum length of 60', but not to block the pedestrian crosswalk at the intersection with Center St.





- 3- Agreed. The Crossing at Center is not included in the proposed Quiet Zone, and as such, the City understands that the train will sound its horn when going through this crossing.
- 4- Copies of sheets showing the latest Risk Index calculations are included (attachment C). Please note that the City was notified by UPRR that UPRR will raise the train speed through the Phoenix corridor. The City recalculated the Risk Index on February 23<sup>rd</sup>, 2015. The City was not able to confirm that the database has the higher operational speeds, and only confirmed what is showing in the calculator compared to available information, namely that the maximum speed is 60 mph.
- 5- The City will consider installing additional warning signs directed at these driveways at the time of Quiet Zone establishment.
- 6- Agreed. The proposed SSMs will be installed prior to the establishment of the Quiet Zone.
- 7- Agreed. Required signs will be installed prior to establishment of the Quiet Zone.
- 8- Agreed. The Grade Crossing Inventory Forms will be part of the Notice of Establishment.

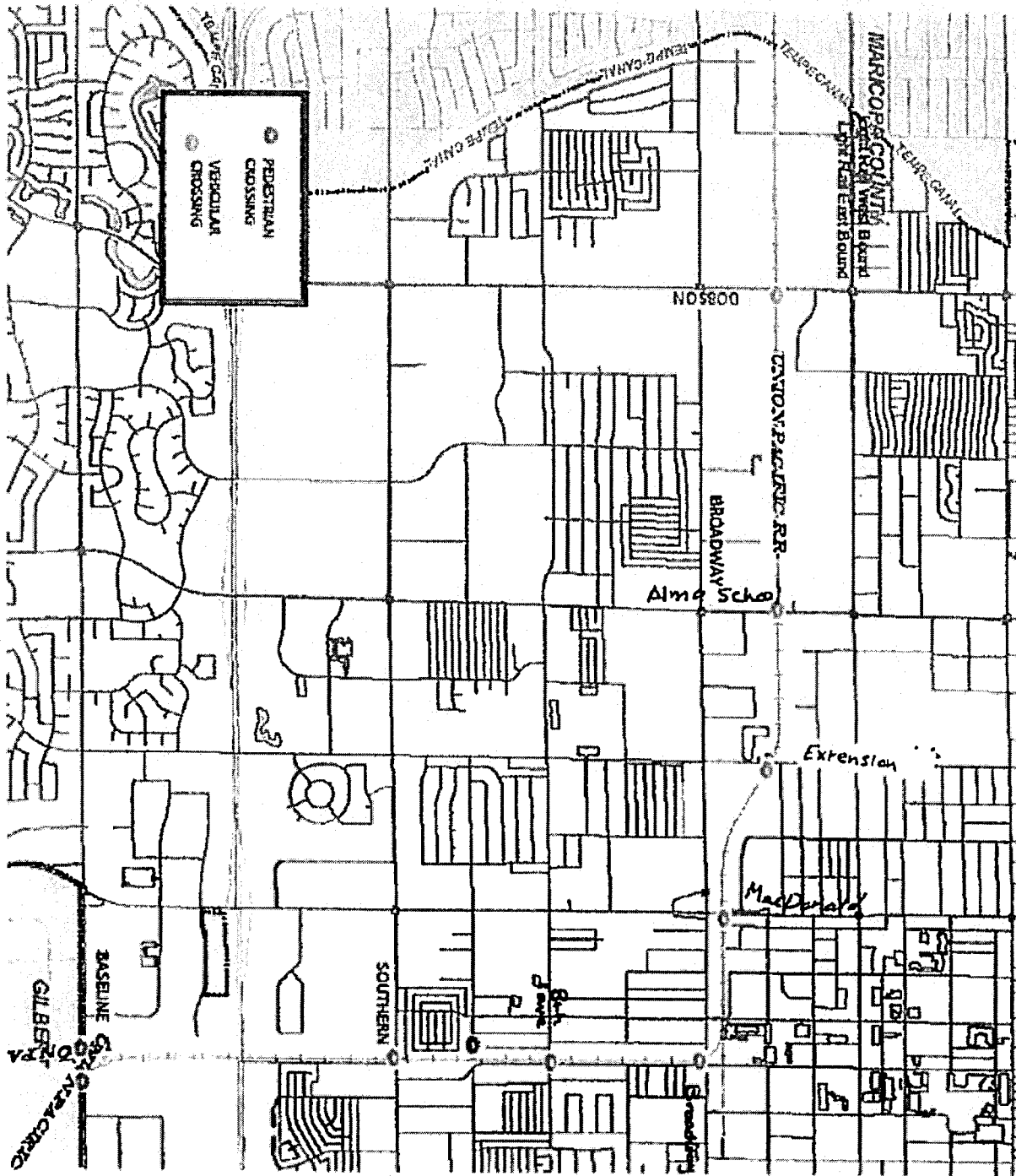
The City is copying Mr. Grosse-Rhode with this response. Based on the above reply to items listed in Mr. Grosse-Rhode's letter, the City intends to move forward with its effort to establish the Quiet Zone described in its NOI post dated December 17. Please indicate if this reply is not sufficient and if it requires additional information to be submitted.

Thank you for your time and attention to this matter.

Sincerely,

Muhannad Al Zubi, P.E.  
Senior Transportation Engineer  
Transportation Department  
City of Mesa

CC:	Stephen Grosse-Rhode	-	UPRR
	Jason Pike	-	ADOT
	Brian Lehman	-	AZCC
	Alexander Popovici	-	UPRR Union Pacific Railroad 631 S. 7 St., Phoenix AZ





**EXHIBIT B****U.S. DOT - CROSSING INVENTORY INFORMATION  
AS OF 11/12/2014**

Crossing No **748735J** Update Reason: **Changed Crossing** Effective Begin Date of Record **03/21/04 11/12/14**  
Railroad **UP Union Pacific RR Co. (UP)** End Date of Record  
Involving Agency Railroad Type and Position **Pedestrian At Grade**

**Part I Location and Classification of Crossing**

Division	<b>WEST COLTON</b>	State	<b>AZ</b>
Subdivision	<b>GILA</b>	County	<b>MARICOPA</b>
Branch or Line Name	<b>PHOENIX LINE</b>	City	<b>In MESA</b>
Railroad Milepost	<b>0922.77</b>	Street or Road Name	<b>WEST 10TH AVE</b>
Railroad LD No	<b>R022.77</b>	Highway Type & No	
Nearest RR Tinterlatine Sta	<b>MESA</b>	HSR Corridor ID	
Parent Railroad		County Map Ref No	<b>07</b>
Crossing Owner		Latitude	<b>33.347045</b>
ENS Sign Installed		Longitude	<b>-111.8316217</b>
Passenger Service		Lat/Long Source	<b>Actual</b>
Avg Passenger Train Count	<b>0</b>	Outlet Zone	<b>No</b>
Adjacent Crossing with Separate Number			

**Private Crossing Information:**

Category

Specify Signs

Public Access

Specify Signals

ST/RR A

ST/RR B

ST/RR C

ST/RR D

Railroad Use

State Use **ENS ON BUNGLOW**

Narrative

Emergency Contact **(602) 648-8713**

Railroad Contact

State Contact

**(602) 712-6493 7-145****Part II Railroad Information**

Number of Daily Train Movements:

Total Trains: **8** Total Switching: **0**Typical Speed Range Over Crossing From **0** to **0** mphType and Number of Tracks Main **0** Other **0**Less Than One Movement Per Day **No**Day Thru **4**Maximum Time Table Speed **60**

Specify

Does Another RR Operate a Separate Track at Crossing?

Does Another RR Operate Over Your Track at Crossing?



U.S. DOT - CROSSING INVENTORY INFORMATION  
Continued

Crossing 748736J

Effective Begin-Date of Record ~~11/1/13~~ 11/12/14  
End-Date of Record

Part III: Traffic Control Device Information

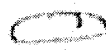
Signs:

Crossbucks: 0  
Advanced Warning: YES  
Pavement Markings:

Highway Stop Signs: 0  
Hump Crossing Sign:  
Other Signs: X 2 Specify: PEO only  
0

Train Activated Devices:

Gates: 0  
Mast Mounted FL: X 2  
Cantilevered FL (Over): 0  
Other Flashing Lights: 0  
Highway Traffic Signals: 0  
Other Train Activated  
Warning Devices:  
Channelization:  
Track Equipped with  
Train Signals?

4 Quad or Full Barrier  
Total Number FL Pairs: X 2  
Cantilevered FL (Not over): 0  
Specify Other Flashing Lights:  
Wiwags: 0 Bells: X 2  
Special Warning Devices Not  
Train Activated  
Type of Train Detection:   
Traffic Light  
Interconnection/Preemption

Part IV: Physical Characteristics

Type of Development:  
Number of Traffic Lanes  
Crossing Railroad  
Is Highway Paved?  
Crossing Surface:  
Nearby Intersecting  
Highway?  
Does Track Run Down a  
Street?  
Is Commercial Power Available?

Smallest Crossing Angle  
Are Truck Pullout Lanes Present?  
If Other:  
Is It Signalized?  
Is Crossing Illuminated?

Part V: Highway Information

Highway System:  
Is Crossing on State  
Highway System  
Annual Average Daily  
Traffic (AADT): 0  
Estimated Percent Trucks  
Posted Highway Speed: 0

Functional Classification of  
Road at Crossing  
AADT Year: ~~2013~~ 2014  
Avg. No of School Buses per Day: 0

**EXHIBIT C**

Federal Railroad Administration

**Quiet Zone Designation Information**

Name Muhannad Zubi	Job Title Senior Transportation Engineer	Organization City of Mesa	
Address P.O. Box 1466 - 300 E 6th St	City Mesa	State AZ	Zip Code 85211
Phone 480-644-4912	Fax 480-644-3130	Email al.zubi@mesaaz.gov	

741649C DOBSON RD	Proposed Warning Device Gates	Estimated Cost 100,000.00	Wayside Horn No	Risk Index 10,662.32
Crossing Type Public	SSM Four-Quadrant Gates Upgrade from Two-Quadrant gates, No Vehicle Presence Detection		Pre-Existing SSM None	

741650B ALMA SCHOOL RD	Proposed Warning Device Gates	Estimated Cost 0.00	Wayside Horn No	Risk Index 47,008.58
Crossing Type Public	SSM None		Pre-Existing SSM None	

741651H EXTENSION RD	Proposed Warning Device Gates	Estimated Cost 15,000.00	Wayside Horn No	Risk Index 8,674.85
Crossing Type Public	SSM Non-Traversable Curb Medians with or without Channelization Devices		Pre-Existing SSM None	

741653W MACDONALD ST	Proposed Warning Device Gates	Estimated Cost 0.00	Wayside Horn No	Risk Index 28,944.92
Crossing Type Public	SSM None		Pre-Existing SSM None	

741637Y BROADWAY RD	Proposed Warning Device Gates	Estimated Cost 15,000.00	Wayside Horn No	Risk Index 8,678.12
Crossing Type Public	SSM Non-Traversable Curb Medians with or without Channelization Devices		Pre-Existing SSM None	
741658F WEST 8TH AVE	Proposed Warning Device Gates	Estimated Cost 0.00	Wayside Horn No	Risk Index 24,437.76
Crossing Type Public	SSM None		Pre-Existing SSM None	
741659M SOUTHERN AVE	Proposed Warning Device Gates	Estimated Cost 0.00	Wayside Horn No	Risk Index 44,247.67
Crossing Type Public	SSM None		Pre-Existing SSM None	
748736J WEST 10TH AVE	Proposed Warning Device Flashing Lights	Estimated Cost 0.00	Wayside Horn No	Risk Index 0.00
Crossing Type Pedestrian	SSM None		Pre-Existing SSM None	



Note: If zone is a partial new quiet zone, gates are not required if the crossing is to be closed during partial quiet zone period, permanently closed, or grade separated.

Zone ID : 35265		Scenario ID : 44531		
Date : 2/23/2015 12:05:09 PM				
Railroad UP	Pre Rule? NO	Partial? NO	Time of Partial Quiet Zone	Total Traffic 123,444
Estimated Total Cost \$130,000.00	Nationwide Significant Risk Threshold 14347		Risk Index with Horns 24,891.99	Quiet Zone Risk Index 24,664.89

### Basis for Establishment or Continuation of Quiet Zone

This quiet zone is being established in compliance with the following (check one)

- ☐ § 222.39(a)(1), implementation of SSMs at every public crossing in the New Quiet Zone or New Partial Quiet Zone;
- ☐ § 222.39(a)(2)(i), the QZRI is at or below the NSRT without installation of any SSMs at the New Quiet Zone or New Partial Quiet Zone;
- ☐ § 222.39(a)(2)(ii), SSMs were implemented at some crossings in the New Quiet Zone or New Partial Quiet Zone to bring the QZRI to a level at or below the NSRT;
- ☐ § 222.39(a)(3), SSMs were implemented at some crossings in the New Quiet Zone or New Partial Quiet Zone to bring the QZRI to a level at or below the RIWH; or
- ☐ § 222.39(b), public authority application to the FRA for a New Quiet Zone or New Partial Quiet Zone.
- ☐ § 222.41(a)(1)(i) Pre-Rule Quiet Zones that qualify for automatic approval because every crossing is equipped with an SSM,
- ☐ § 222.41(a)(1)(ii) Pre-Rule Quiet Zones that qualify for automatic approval because  $QZRI \leq NSRT$ ,
- ☐ § 222.41(a)(1)(iii) Pre-Rule Quiet Zones that qualify for automatic approval because  $NSRT < QZRI < 2^* NSRT$ , and there have been no relevant collisions within the 5 years preceding April 27, 2005
- ☐ § 222.41(a)(1)(iv) Pre-Rule Quiet Zones that qualify for automatic approval because  $NSRT < RIWH$ .
- ☐ § 222.41(b)(1)(i) Pre-Rule Partial Quiet Zones that qualify for automatic approval because every crossing is equipped with an SSM,
- ☐ § 222.41(b)(1)(ii) Pre-Rule Partial Quiet Zones that qualify for automatic approval because  $QZRI \leq NSRT$ ,
- ☐ § 222.41(b)(1)(iii) Pre-Rule Partial Quiet Zones that qualify for automatic approval because  $NSRT < QZRI < 2^* NSRT$ , and there have been no relevant collisions within the 5 years preceding April 27, 2005.
- ☐ § 222.41(b)(1)(iv) Pre-Rule Partial Quiet Zones that qualify for automatic approval because  $NSRT < RIWH$ .
- ☐ § 222.41(c) Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that do not qualify for automatic approval



- ☐ § 222.41(d) Pre-Rule Partial Quiet Zones that will be converted to 24-hour New Quiet Zones
- ☐ § 222.42(a) Intermediate Quiet Zones or Intermediate Partial Quiet Zones
- ☐ § 222.42(b) Intermediate Partial Quiet Zones that will be converted to 24-hour New Quiet Zones.

Applicant Signature \_\_\_\_\_

Date \_\_\_\_\_

**Chief Executive Officer Statement.**

I hereby certify that the information submitted in this notification is accurate and complete to the best of my knowledge and belief.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Note: A copy of this report along with other required contents (see § 222.43(e)(2)) must be sent to all of the parties required in § 222.43(a)(4). FRA's notification should be mailed to:

Associate Administrator for Safety  
Federal Railroad Administration  
1200 New Jersey Avenue, SE, MS-25  
Washington, DC 20590



Federal Railroad Administration

## Quiet Zone Designation Information

### Public At-grade Open Crossing Information

Crossing:	741649G	Urban(U)/Rural(R):	U.Minor Arterial
Warning Device:	Gates	Highway Paved:	yes
aadt:	26900	Maximum Timetable Speed :	60
Total Trains:	10	Highway Lanes:	6
Day Through Trains:	10	No. of Accident Data Years:	5
Main Tracks:	1	No. of Accidents:	0
Other Tracks:	0	Total Switching Trains:	
Crossing:	741650B	Urban(U)/Rural(R):	U.Minor Arterial
Warning Device:	Gates	Highway Paved:	yes
aadt:	30500	Maximum Timetable Speed :	60
Total Trains:	11	Highway Lanes:	4
Day Through Trains:	5	No. of Accident Data Years:	5
Main Tracks:	1	No. of Accidents:	0
Other Tracks:	0	Total Switching Trains:	
Crossing:	741651H	Urban(U)/Rural(R):	U.Collector
Warning Device:	Gates	Highway Paved:	yes
aadt:	12600	Maximum Timetable Speed :	60
Total Trains:	11	Highway Lanes:	5
Day Through Trains:	5	No. of Accident Data Years:	5
Main Tracks:	1	No. of Accidents:	0
Other Tracks:	0	Total Switching Trains:	



Crossing:	741653W	Urban(U)/Rural(R):	U.Collector
Warning Device:	Gates	Highway Paved:	yes
aadt:	4194	Maximum Timetable Speed :	60
Total Trains:	11	Highway Lanes:	4
Day Through Trains:	5	No. of Accident Data Years:	5
Main Tracks:	1	No. of Accidents:	0
Other Tracks:	1	Total Switching Trains:	
<hr/>			
Crossing:	741657Y	Urban(U)/Rural(R):	U.Minor Arterial
Warning Device:	Gates	Highway Paved:	yes
aadt:	20250	Maximum Timetable Speed :	60
Total Trains:	8	Highway Lanes:	5
Day Through Trains:	4	No. of Accident Data Years:	5
Main Tracks:	1	No. of Accidents:	0
Other Tracks:	0	Total Switching Trains:	
<hr/>			
Crossing:	741658F	Urban(U)/Rural(R):	U.Collector
Warning Device:	Gates	Highway Paved:	yes
aadt:	6700	Maximum Timetable Speed :	60
Total Trains:	8	Highway Lanes:	2
Day Through Trains:	4	No. of Accident Data Years:	5
Main Tracks:	1	No. of Accidents:	0
Other Tracks:	0	Total Switching Trains:	
<hr/>			
Crossing:	741659M	Urban(U)/Rural(R):	U.Minor Arterial
Warning Device:	Gates	Highway Paved:	yes
aadt:	22300	Maximum Timetable Speed :	60
Total Trains:	8	Highway Lanes:	5
Day Through Trains:	4	No. of Accident Data Years:	5
Main Tracks:	1	No. of Accidents:	0
Other Tracks:	0	Total Switching Trains:	



23-Mar SY09A	Stapley	Southern-US-60	13447	2
23-Mar SY07A	Stapley	Main-University	16873	2
23-Mar LY04	Lindsay	McKellips-Hermosa Vista		2
25-Mar WO8B/9A	ValVista	Pueblo-US 60	39315	2
25-Mar IO9AB	39th Street	Baseline-US 60	13778	2
27-Mar GD08A/B	Greenfield	Broadway-Southern	39595	2
27-Mar JO6AA/AB	Adobe	Greenfield-Higley	26624	2
27-Mar HY06	Higley	University-Adobe		2
31-Mar PD03B	Power	ADOT ROW-McDowell	12063	2
31-Mar LO3BB	64th Street	Preston-McDowell	9895	2
31-Mar SM04B	Sossaman	612'N/O McKellips-McKellips	2481	2
2-Apr UY13A	University	Power-Sossaman	43295	2
6-Apr MI0AA	Superstition SP	Baseline-Sossaman	30880	2
6-Apr M10AB	72nd Street	Superstition SP-Monterey	10669	2
6-Apr M10BB	Monterey	72nd Street-Sossaman	10255	2
8-Apr BE15B	Baseline	ADOT ROW-Ellsworth	21157	2
8-Apr BEEHC	Baseline/Ellsworth	Intersection	1354	2
8-Apr HS11B	Hawes	Paloma-Elliot	8951	2
10-Apr HS09A	Nhawes	Southern-South	5001	2
10-Apr PO8CA	Pueblo	E/C/F 98th St-Crismon	6365	2
13-Apr TSPDC	Thomas/Power	Intersection	1087	2
13-Apr MSGDC	Greenfield/McKellips	Intersection	930	2
13-Apr MLGDC	Greenfield/McDowell	Intersection	1062	2
3-28/4-4 Q08AA	Cheshire	Broadway-Southern	23669	2
3-28/4-4 M10BA	Monterey	Power-72nd Street	13312	2
3-28/4-4 M10DA	74th Street	Monterey-Guadalupe	5693	2

APPROVED AS TO FORM BY GENERAL COUNSEL  
MARCH 15, 1973

Mile Post 919.46-X-N

C.S. 7362

## STREET OR HIGHWAY EASEMENT

289157

This Indenture, made this 6<sup>th</sup> day of November, 1975, by and between  
**SOUTHERN PACIFIC TRANSPORTATION COMPANY**, a Delaware  
 corporation, herein called "Railroad", and  
**CITY OF MESA**, a municipal corporation of the State of Arizona, address:  
 City Hall, Mesa, Arizona, herein called "Grantee";

## Witnesseth:

sidewalks,

1. That Railroad hereby grants to Grantee the right to construct, reconstruct, maintain and use ~~the~~ street or highway,  
 hereinafter termed "highway", upon and across the real property described on the attached Exhibit "A".

2. The rights herein granted are expressly limited vertically and shall not extend beyond a plane parallel with and  
 twenty (20) feet above the roadway surface of the highway as originally constructed, except that lighting fixtures and simi-  
 lar highway appurtenances may extend above said plane, provided that any such facilities will be removed or rearranged  
 within thirty (30) days after notification from Railroad that such facilities interfere with Railroad's intended use of the  
 space above said plane.

3. This grant is subject and subordinate to the prior right of Railroad, its successors and assigns, to use all the prop-  
 erty described in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and  
 assigns, the right to construct, reconstruct, maintain, use and remove existing and future transportation, communication,  
 power and pipeline facilities in, upon, over, under, across or along said property. In the event Railroad trackage facilities  
 are removed from said property, Railroad shall not be obligated to make any change in the grade of said highway, nor  
 shall such removal affect Railroad's title to the underlying property.

This grant is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and  
 claims of title which may affect said property, and the word "grant" shall not be construed as a covenant against the  
 existence thereof.

4. The rights herein granted shall lapse and become void if the construction or reconstruction of said highway is not  
 commenced within two (2) years from the date first herein written.

5. This grant shall not be construed as conveying or otherwise vesting in Grantee the right to install or to authorize  
 the installation of any ditches, pipes, drains, sewer or underground structures, or the facilities of any telegraph, telephone  
 or electric power lines in, upon, over, under, across or along said property, except as necessary for maintenance of said  
 highway.

6. Grantee shall obtain any necessary governmental authority to construct, reconstruct, maintain and use said highway.  
 Any contractor performing work on the property herein described shall execute Railroad's standard form of contractor's  
 agreement prior to commencing any work on Railroad's premises.

7. Except as herein otherwise provided, Grantee shall bear the entire expense of constructing, reconstructing and main-  
 taining said highway. The crossing of said highway over any tracks of Railroad shall be constructed and maintained at the  
 grade of said tracks now or hereafter existing. After the construction or reconstruction of said highway has been completed,  
 Railroad shall maintain the surface of that portion of said highway between lines two (2) feet outside the rails of each track  
 located thereon. Should Railroad abandon tracks leading to said highway, Railroad may abandon its rails, ties and appurte-  
 nant materials and leave same in place. In such event, Railroad shall not be liable for maintenance of the portion of said  
 highway specified above.

8. As part consideration hereof, Grantee agrees to pay Railroad an amount equal to all assessments levied by any  
 lawful body against the property of Railroad to defray any part of the expense incurred in connection with the construction  
 or reconstruction of said highway commenced within two (2) years from the date first herein written.

9. Should Grantee at any time abandon the use of said property or any part thereof, or fail to use the same for said  
 purpose for a continuous period of one (1) year, the rights granted shall cease to the extent of the use so abandoned or  
 discontinued, and Railroad shall at once have the right, in addition to but not in qualification of the rights hereinabove re-  
 served, to resume exclusive possession of said property or the part thereof the use of which is so discontinued or abandoned.  
 Upon termination of the rights hereby granted, Grantee agrees to remove said highway, including the paving, from said  
 property of Railroad, to restore said property as nearly as practicable to the same state and condition in which it existed  
 prior to construction of said highway, and to bear the expense thereof. Should Grantee in such event fail, neglect or refuse  
 to so remove said highway and restore said property, such removal and restoration may be performed by Railroad at the  
 expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand.

10. This indenture shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

11. Sections 12, 13 and 14 on the insert hereto attached are hereby made  
 parts of this indenture.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and  
 year first herein written.

**SOUTHERN PACIFIC TRANSPORTATION  
 COMPANY,**

By L. A. Blake  
 (Title) Manager, Contract Dept.

Attest: R. H. Humphrey  
 Assistant Secretary

CITY OF MESA,

By J. C. Peltier  
 Mayor

By Earthe Dana  
 Acting Clerk

EXHIBIT

M-4  
ADMITTED

I N S E R T

Dobson Road, Mile Post 919.46, Mesa, Arizona

12. Grantee, at Grantee's expense, shall place necessary paving within the sidewalk easement area.

13. Grantee, at its expense, shall make all necessary arrangements with Gary Advertising Company for relocation of its existing signboard located within the easement area.

14. Grantee agrees to reimburse Railroad for all cost and expense incurred by Railroad in connection with the construction, reconstruction, maintenance and use of said highway.

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EXHIBIT A  
PROPERTY DESCRIPTION  
EASEMENT TO CITY OF MESA

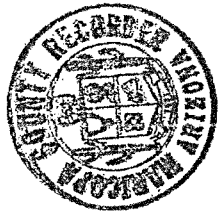
OK 114456 503

A piece or parcel of land situate, lying and being in Sections 19 and 20, Township 1 North, Range 5 East, Gila and Salt River Base and Meridian, in the County of Maricopa, State of Arizona, more particularly described as follows:

Parcel #1: Beginning at a point in the Northerly line of land (66 feet wide) of the Southern Pacific Transportation Company, said point being 55 feet westerly along said Northerly line from its intersection with the common line of said Sections 19 and 20; thence Westerly along said Northerly line 17 feet to a point; thence Southerly parallel with and distant 72 feet westerly measured at right angles from said section line 33 feet to a point in the centerline of said Company's main track, (Phoenix to Mesa) at Engineer's Station 672+87; thence in a Southeasterly direction 37.12 feet to a point in the Southerly line of land of said Company, being distant there on 55 feet Westerly from said common Section line; thence Northerly parallel with and distant 55 feet Westerly <sup>(WEST OF AND)</sup> at right angles from said section line <sup>AND</sup> 66 feet to the point of beginning, containing an area of 842 square feet, more or less.

Parcel #2: Beginning at a point in the Southerly line of land (83 feet wide) of the Southern Pacific Transportation Company, said point being 55 feet Easterly along said Southerly line from its intersection with the common line of said Sections 19 and 20; thence Easterly along said Southerly line 6 feet to a point; thence Northerly parallel with and distant 61 feet Easterly measured at right angles from said section line 50 feet to a point in the centerline of said Company's main track (Phoenix to Mesa) at Engineer's Station 674+20; thence Westerly along said centerline 6 feet to a point, thence

EXHIBIT A



RESOLUTION NO. 3991

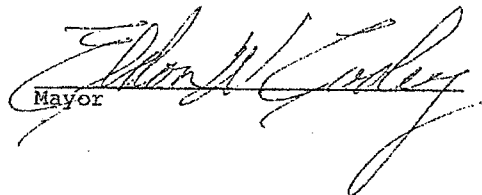
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF AN EASEMENT WITH SOUTHERN PACIFIC TRANSPORTATION COMPANY FOR INSTALLATION OF SIDEWALKS ON SOUTH DOBSON ROAD.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That the Manager and Acting City Clerk are authorized and directed on behalf of the CITY OF MESA to execute a certain Easement Agreement with Southern Pacific Transportation Company for installation of sidewalks on South Dobson Road, a true and correct copy of such easement being on file in the office of the City Clerk.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 6th day of October, 1975.

APPROVED:

  
Mayor

ATTEST:

  
Acting City Clerk

I N S E R T

Dobson Road, Mile Post 919.46, Mesa, Arizona

12. Grantee, at Grantee's expense, shall place necessary paving within the sidewalk easement area.

13. Grantee, at its expense, shall make all necessary arrangements with Gary Advertising Company for relocation of its existing signboard located within the easement area.

14. Grantee agrees to reimburse Railroad for all cost and expense incurred by Railroad in connection with the construction, reconstruction, maintenance and use of said highway.

\*

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\*

EXHIBIT A

DX 11445 498

Southerly parallel with and distant 55 feet Easterly measured  
at right angles from said section line 50 feet to the point of  
beginning, containing an area of 300 square feet, more or less.

STATE OF ARIZONA } ss  
County of Maricopa }

I hereby certify that the with-  
in instrument was filed and re-  
corded at request of

*City of Mesa*

DEC 5 1975 -9 25  
in Docket 11445  
on page 493-498

Witness my hand and official  
seal the day and year aforesaid.

*Tom Freestone*

County Recorder

By *Shannon*  
Deputy Recorder

EXHIBIT A

100





UPRR Folder No.:2784-35  
UPRR Audit No. S178839

## PUBLIC HIGHWAY AT-GRADE CROSSING IMPROVEMENT AGREEMENT

THIS AGREEMENT is made as of the 30<sup>th</sup> day of December, 2015, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, or its predecessor in interest, with a mailing address at 1400 Douglas Street, MS 1690, Omaha, Nebraska, 68179-1690 ("Railroad"), **CITY OF MESA**, a municipal corporation/political subdivision with a mailing address at 20 E Main St, Mesa, Arizona 82511 ("Political Body").

### RECITALS:

Presently, the Political Body utilizes the Railroad's property for the existing Dobson Rd at-grade public road crossing, DOT No. 741649G, at Railroad's Mile Post 919.45 on its Phoenix Subdivision in or near Mesa, Maricopa County, Arizona (hereinafter the "Political Body").

The Political Body now desires to add new gates and lights at the existing Dobson Road at-grade public road crossing. The existing aforementioned Dobson Road at-grade public road crossing, as improved to include the installation of gates and signals, is hereinafter the "Roadway," and where the Roadway crosses the Railroad's property is the "Crossing Area" in the location generally shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof.

At the Political Body's request, the Railroad has agreed to enter into this Agreement to install the lights and gates at the Political Body's sole expense and to set forth the parties' respective rights and obligations with respect to the performance of the Project work and the ongoing maintenance, use and repair of the Roadway within the Crossing Area.

The Railroad and the Political Body and entering into this agreement to cover the above.

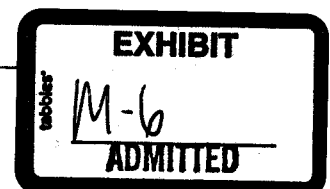
### AGREEMENT:

NOW THEREFORE, in consideration of the premises and of the promises and conditions hereinafter set forth, the parties hereto agree as follows:

#### SECTION 1.

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit B	Railroad's Form of Contractor's Right of Entry Agreement
Exhibit C	General Terms and Conditions





## Exhibit D Railroad Estimate

### SECTION 2.

- A. All of Flagging Costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- B. The Political Body agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

### SECTION 3.

- A. The Political Body, at its expense, if necessary, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering–Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. Notwithstanding the Railroad's approval of the Plans, the Railroad shall not be responsible for the permitting, design, details or construction of the Roadway.

### SECTION 4.

The Railroad shall maintain the crossing between the track tie ends. If, in the future, the Political Body elects to have the surfacing material between the track tie ends replaced with paving or some surfacing material other than timber planking, the Railroad, at Political Body's expense, shall install such replacement surfacing.

### SECTION 5.

- A. The Political Body, at its sole cost and expense, shall provide traffic control, barricades, and all detour signing for the crossing work, provide all labor, material and equipment to install concrete or asphalt street approaches, and if required, will install advanced warning signs, and pavement markings in compliance and conformance with the Manual on Uniform Traffic



Control Devices.

- B. The Political Body, at its expense, shall maintain and repair all portions of the Roadway approaches that are not within the track tie ends.

#### SECTION 6.

If Political Body's contractor(s) is/are performing any work described in Section 4 above, then the Political Body shall require its contractor(s) to execute the Railroad's standard and current form of Contractor's Right of Entry Agreement attached hereto as **Exhibit B**. Political Body acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor(s) of the need to execute the Agreement. Under no circumstances will the Political Body's contractor(s) be allowed onto the Railroad's premises without first executing the Contractor's Right of Entry Agreement.

#### SECTION 7.

Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body or its contractor(s) shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour number, 7 day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body or its contractor(s). If it is, Political Body or its contractor(s) will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### SECTION 8.

The Political Body, for itself and for its successors and assigns, hereby waives any right of assessment against the Railroad, as an adjacent property owner, for any and all improvements made under this agreement.

#### SECTION 9.

Covenants herein shall inure to or bind each party's successors and assigns; provided, no right of the Political Body shall be transferred or assigned, either voluntarily or involuntarily, except by express prior written consent of the Railroad.

#### SECTION 10.

The Political Body shall, when returning this agreement to the Railroad (signed), cause same to be accompanied by such Order, Resolution, or Ordinance of the governing body of the Political Body, passed and approved as by law prescribed, and duly certified, evidencing the authority of the person executing this agreement on behalf of the Political Body with the power so to do, and which also will certify that funds have been appropriated and are available for the payment of any sums herein agreed to be paid by Political Body.



## SECTION 11.

The Political Body agrees to reimburse the Railroad the cost of future maintenance of the automatic grade-crossing protection within thirty (30) days of the Political Body's receipt of billing.

## ARTICLE 12. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO PUBLIC BODY; PUBLIC BODY'S PAYMENT OF BILLS

- A. The work to be performed by the Railroad, at the Public Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate dated May 13, 2015, marked **Exhibit D**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is \$551,089.
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Public Body in the event the Public Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The Public Body acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the Public Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Public Body or the Contractor as determined by the Railroad and the Public Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Public Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The Public Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

## SECTION 13. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and



acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project.

**SECTION 14.**

The General Terms and Conditions marked **Exhibit C**, are attached hereto and hereby made a part hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Supplemental Agreement to be executed as of the day and year first hereinabove written.

**UNION PACIFIC RAILROAD COMPANY**  
(Federal Tax ID #94-6001323)

By: \_\_\_\_\_

Dan Leis

General Director-Real Estate

*Daniel A. Leis*

DANIEL A. LEIS

GENERAL DIRECTOR REAL ESTATE

WITNESS:

**CITY OF MESA**

X

*Howe But*

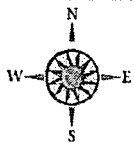
Title:

*Asst. City Mgr*

# EXHIBIT A

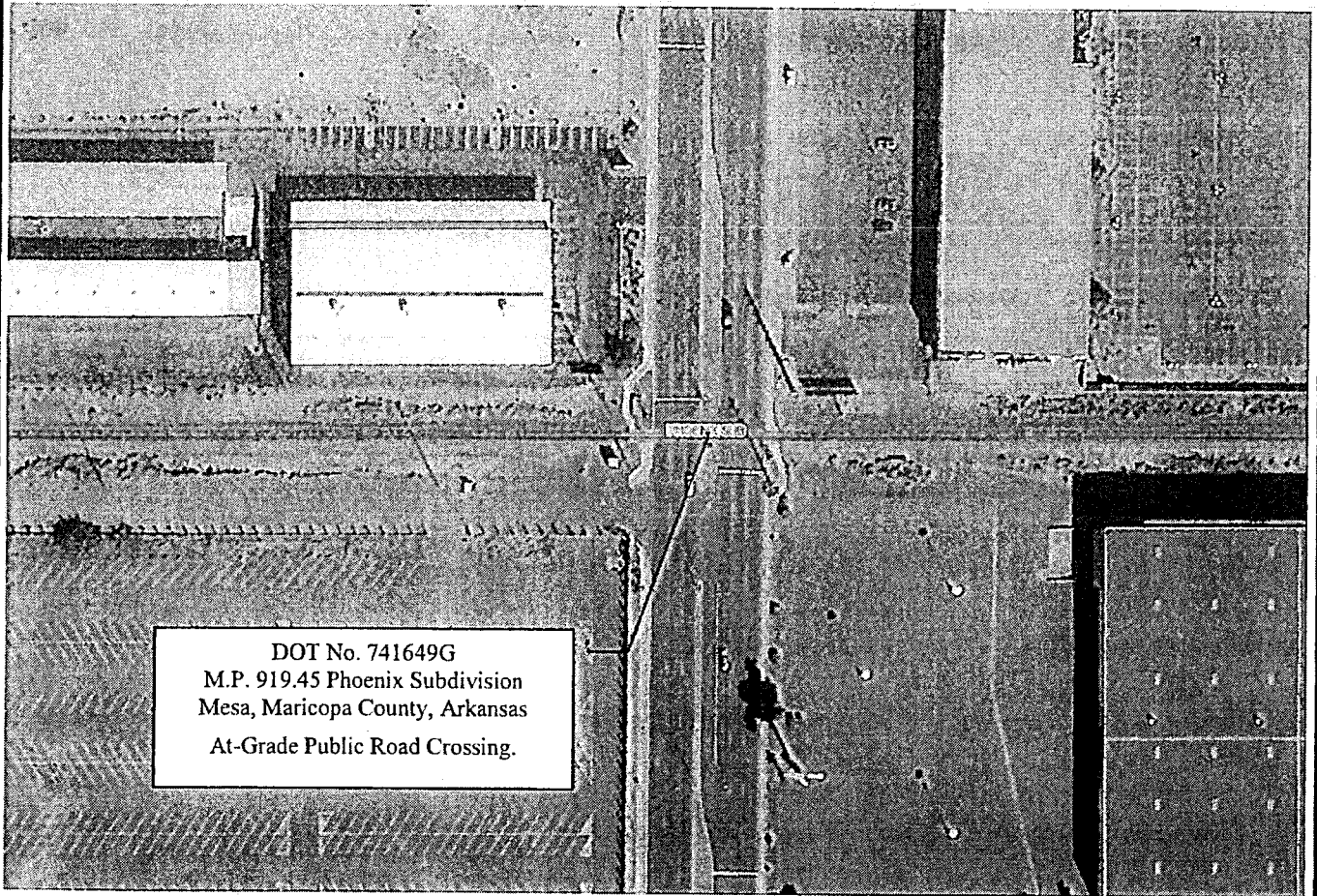
To Public Highway At-Grade Crossing  
Improvement Agreement

Cover Sheet for the  
Railroad Location Print



# EXHIBIT "A"

## RAILROAD LOCATION PRINT FOR AN EXISTING AT-GRADE PUBLIC ROAD CROSSING AGREEMENT



DOT No. 741649G  
M.P. 919.45 Phoenix Subdivision  
Mesa, Maricopa County, Arkansas  
At-Grade Public Road Crossing.

### UNION PACIFIC RAILROAD COMPANY

PHOENIX SUBDIVISION  
RAILROAD MILE POST 919.45  
MESA, MARICOPA COUNTY, AZ

To accompany an agreement with  
**CITY OF MESA AND ITS CONTRACTOR**  
covering an At-Grade Public Road Crossing.

Folder No. 2784-35

Date: June 11, 2015

### WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN  
ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE  
PHONE: 1-(800) 336-9193

# EXHIBIT B

To Public Highway At-Grade Crossing  
Improvement Agreement

Cover Sheet for the Form of  
Contractor's Right of Entry Agreement





UPRR Folder No. 2784-35  
(Folder Number)

UPRR Audit No.: \_\_\_\_\_  
(Audit Number)

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

\_\_\_\_\_  
(NAME OF CONTRACTOR)  
a \_\_\_\_\_ corporation ("Contractor").  
(State of Incorporation)

### RECITALS:

Contractor has been hired by \_\_\_\_\_  
(Name of Public Agency)  
("Public Agency") to perform work relating to

\_\_\_\_\_  
(Work to be Performed)  
(the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad Mile Post \_\_\_\_\_ on Railroad's \_\_\_\_\_,  
(Mile Post) (Name of Subdivision)  
DOT No. \_\_\_\_\_, located at or near \_\_\_\_\_, in \_\_\_\_\_ County,  
(DOT Number) (City) (County)  
State of \_\_\_\_\_, as such location is in the general location shown on the Railroad Location

Print marked **Exhibit A**, and as detailed on the Detailed Prints collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated \_\_\_\_\_ between Railroad and the Public Agency.  
(Date of C&M Agreement)

The Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

### AGREEMENT:

**NOW, THEREFORE**, it is mutually agreed by and between Railroad and Contractor, as follows:



**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

**ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4B below.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.**

The terms and conditions contained in Exhibit B, Exhibit C and Exhibit D, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative(s) or his or her duly authorized representative (the "Railroad Representative"):

*Name & Address of MTM*

*Name & Address of MSM*

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of Exhibit B. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.**

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.



**ARTICLE 6 - TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided,  
(Expiration Date)  
or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.
- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**ARTICLE 7 - CERTIFICATE OF INSURANCE.**

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179-1690*

*UPRR Folder No. 2784-35  
(Folder Number)*

**ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 9- ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **FIVE HUNDRED DOLLARS (\$500.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.**

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable



Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

**ARTICLE 11 - EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**  
(Federal Tax ID No. 94-6001323)

Signed By: \_\_\_\_\_  
PAUL G. FARRELL  
Manager Real Estate

\_\_\_\_\_  
(Name of Contractor)

Signed By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

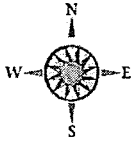
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**EXHIBITS A & A-1**

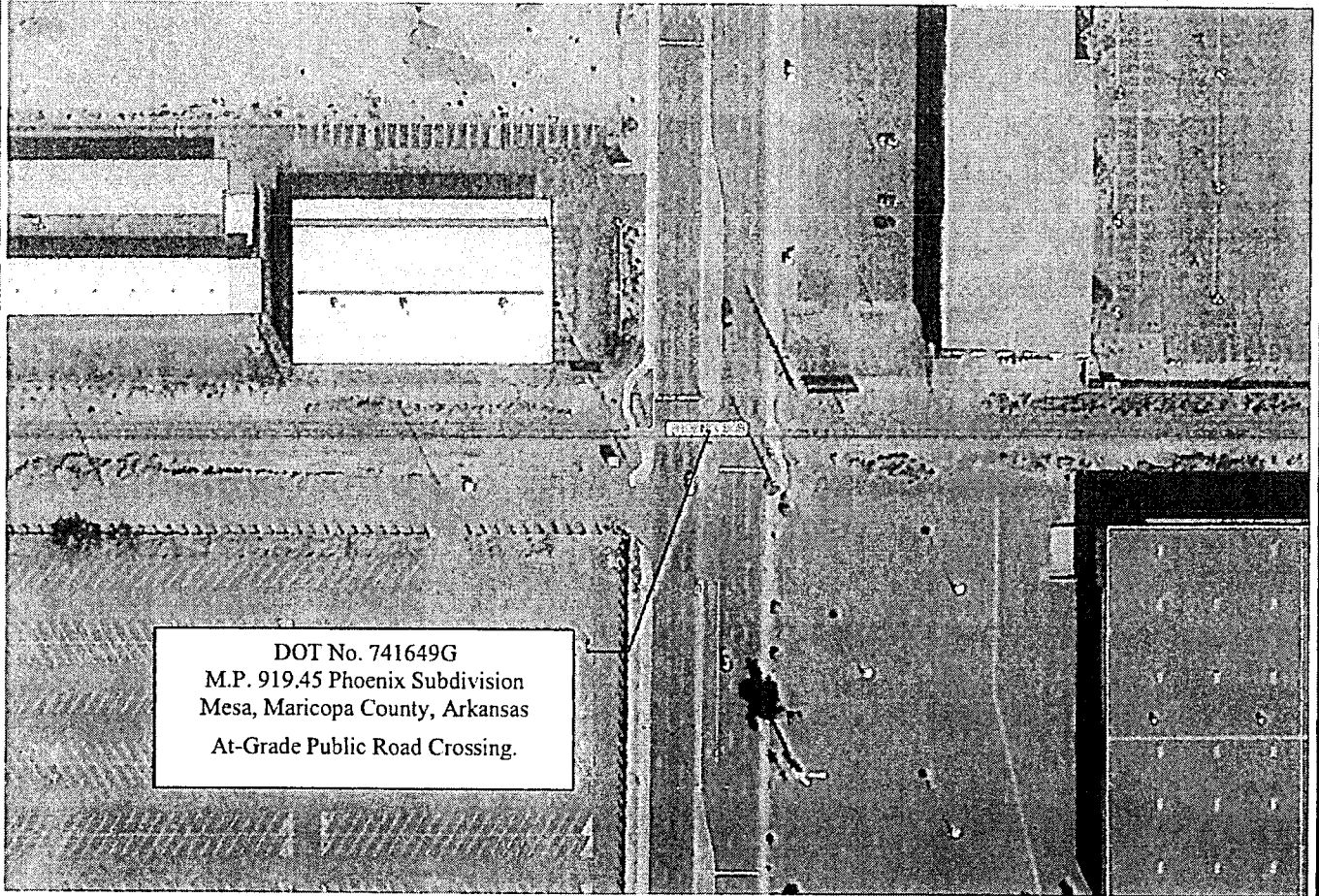
TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Shall be the Railroad Location Print & Detailed Prints



# EXHIBIT "A"

## RAILROAD LOCATION PRINT FOR AN EXISTING AT-GRADE PUBLIC ROAD CROSSING AGREEMENT



### UNION PACIFIC RAILROAD COMPANY

PHOENIX SUBDIVISION  
RAILROAD MILE POST 919.45  
MESA, MARICOPA COUNTY, AZ

To accompany an agreement with  
**CITY OF MESA AND ITS CONTRACTOR**  
covering an At-Grade Public Road Crossing.

Folder No. 2784-35

Date: June 11, 2015

### WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN  
ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE  
PHONE: 1-(800) 336-9193



## **EXHIBIT B**

### **TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

#### **GENERAL TERMS AND CONDITIONS**

##### **Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

- A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

##### **Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.



- B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY.**

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in





**Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 8. INDEMNITY.**

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. **Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.**
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.



**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.



## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE PROVISIONS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. **Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. **Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. **Railroad Protective Liability Insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. **Umbrella Or Excess Insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.



- F. Pollution Liability Insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### Other Requirements

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.



## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

#### I. CLOTHING

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
  - ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### II. PERSONAL PROTECTIVE EQUIPMENT

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

#### III. ON TRACK SAFETY

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.

- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### IV. EQUIPMENT

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - iii. Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### V. GENERAL SAFETY REQUIREMENTS

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
  - v. Before stepping over or crossing tracks, look in both directions first.
  - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

# EXHIBIT C

To Public Highway At-Grade Crossing  
Improvement Agreement

Cover Sheet for the Form of  
General Terms & Conditions



## EXHIBIT C

### TO PUBLIC HIGHWAY AT-GRADE CROSSING IMPROVEMENT AGREEMENT

#### GENERAL TERMS AND CONDITIONS

##### SECTION 1. CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its Political Bodys now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

##### SECTION 2. CONSTRUCTION OF ROADWAY

- A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in





compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

### **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

### **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

### **SECTION 5. MAINTENANCE AND REPAIRS**

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

### **SECTION 6. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

### **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

### **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration



regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof,



or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

#### **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

#### **SECTION 11. BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

#### **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

#### **SECTION 13. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

# EXHIBIT D

To Public Highway At-Grade Crossing  
Improvement Agreement

MATERIAL AND FORCE ACCOUNT  
ESTIMATE

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD

DATE: 2015-05-13

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2015-11-11

DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS  
WITH GATES AT MESA, AZ. DOBSON ROAD M.P. 919.45  
ON THE PHOENIX SUB. DOT #741649G  
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:  
SIGNAL - CITY OF MESA - 100%  
ESTIMATED USING FEDERAL LABOR ADDITIVES WITH INDIRECT AND  
OVERHEAD CONSTRUCTION COST'S - 187.90%

PID: 90612 AWO: 29122 MP, SUBDIV: 919.45, PHOENIX  
SERVICE UNIT: 16 CITY: NORMAL JCT STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			12274		12274		12274
LABOR ADDITIVE 187.90%			31967		31967		31967
SIG-HWY XNG			4821		4821		4821
<b>TOTAL ENGINEERING</b>			<b>49062</b>		<b>49062</b>		<b>49062</b>
<b>SIGNAL WORK</b>							
ASPHALT				5000	5000		5000
BILL PREP	900				900		900
CONTRACT				10883	10883		10883
EGMS SYSTEM				66485	66485		66485
LABOR ADDITIVE 187.90%	163453				163453		163453
MATL STORE EXPENSE			13		13		13
PERSONAL EXPENSES			31500		31500		31500
RCLW CONTRACT			11594		11594		11594
SALES TAX			4353		4353		4353
SAWCUT			5000		5000		5000
SIGNAL	86090		108834		194924		194924
TRANSP/IB/OB/RCLW			7912		7912		7912
ENVIRONMENTAL PERMIT			10		10		10
<b>TOTAL SIGNAL</b>			<b>250443</b>	<b>251584</b>	<b>502027</b>		<b>502027</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>299505</b>	<b>251584</b>			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					<b>551089</b>	<b>0</b>	
<b>ESTIMATED PROJECT COST</b>							<b>551089</b>

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.